IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

MFA.No. 1107 of 2001()

OP(MV.)79/2000 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD
.....

APPELLANT: PETITIONER

LAKSHMI, W/O. GOVINDAN,
AGED 48 YEARS,
RESIDING AT ALINGAL BELLIKOTH,
AJANUR VILLAGE, HOSDURG TALUK,
POST AJANUR.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS: RESPONDENTS
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1. **A.GOVINDAN, S/O. KOMAN,**
CHEEMENI, NEAR DHARMASASTHA TEMPLE,
ALAKKADAN HOUSE, CHEEMENI,
HOSDURG TALUK.

2. **B.HUSSAIN, S/O. KUNHAMOO,**
BELLIKOTH HOUSE, NEAR MOSQUE,
P.O.AJANUR, HOSDURG TALUK.

3. **THE MANAGER,**
UNITED INDIA INSURANCE COMPANY LIMITED,
BRANCH OFFICE KANHANGAD,
P.O. KANHANGAD, HOSDURG TALUK.

BY ADV. SMT.NARAYANIKUTTY CHETTOOR - R3

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.No.1107 OF 2001

Dated 4th December, 2007

JUDGMENT

Koshy,J.

On 18.9.1998 while the appellant was walking along the side of the public road, a lorry driven by the first respondent in a rash and negligent manner hit her. She fell down and sustained serious injuries. Second respondent was the owner and third respondent was the insurer of the lorry. She claimed that she was a construction worker and she was earning an income of Rs.3,000/= per month. As a result of the accident she is unable to do work any more and she calimed a compensation of Rs.2,00,000/=. Tribunal even though found negligence on the part of the driver of the vehicle insured by the third respondent insurance company awarded only Rs.65,787/=. Only quantum of compensation is disputed in this appeal.

2. As far as personal injuries are concerned, Ext.A3 wound certificate shows that she sutained fracture of neck of the scapula and lacerated wound on the left side of the face. She was admitted in the hospital on 18.9.1995 and discharged on 30.9.1998 as can be seen from Ext.A5 discharge certificate. Again she was admitted in the hospital on 12.10.98 and discharged on 20.10.98. Ext.A6 shows that she was again

admitted on 19.1.1999 and discharged on 27.1.1999. She was continuously under treatment for four months. The doctor who treated her issued Ext.A4 medical certificate which reads as follows:

> "This is to certify that Mrs.Laxmi was admitted in this Hospital on 18/9/98 following an RTA in which she sustained the following injuries.
>
> 1. Degloving injury left side scalp from occipital region to left orbit.
> 2. Lacerated wound left side face.
> 3. Fracture neck left scapula.
>
> She underwent wound debridement and suturing of the above wound and her scapular fracture was treated conservatively.
>
> On review today, her fracture has united satisfactorily but has limitation of last 20^{O} of internal and external rotation and 15^{O} abduction at the shoulder which are permanent.
>
> She has also inability to close her left upper eyelid and her total disability may be assessed at 25% of her function."

She was examined by a Medical Board. Medical Board certified that her physical permanent disability is 9%. But, it will be difficult for her to do construction or other heavy work thereafter. Medical Board observed that it is unlikely that she will be able to do occupation of a construction worker. Tribunal granted a compensation of Rs.17,000/= for disability, loss of earning power and loss of amenities.

It is the definite case that she is unable to do construction work and she has 100% disability. The fact that she was a construction worker is proved by Ext.A7 identity card which is issued by the Kerala Construction Workers' Fund Board which is a statutory board. The minimum wages of a construction worker is more than Rs.100/= per day. Therefore, we are of the opinion that at least she will get 25 days' work and Rs.2,500/= can be fixed as the monthly income as her service to the house as wife and mother to the children also should not be underestimated. In any event, Rs.2,500/= can be fixed as the monthly income in the year 1999. She was aged 46 at the time of the accident. Taking second schedule for guidance, 13 is the apt multiplier. Even if only 9% disability is taken into account compensation payable will be Rs.35,100/= (Rs.2,500 x 12 x $\frac{9}{100}$ x 13).

Tribunal has granted only Rs.17,000/= for permanent disability, loss of earning and loss of amenities of life. Therefore, additional amount payable under this head will be Rs.18,100/=. Tribunal found that she was completely bed ridden for four months, but, only Rs.4,000/= was awarded. Since we have fixed Rs.2,500/= as the monthly income, she is entitled to an additional amount of Rs.6,000/= on that count. It was stated that she was treated in Mangalore Hospital and apart from the inpatient treatment she had to go several times for outpatient treatment also to Mangalore. Tribunal has

granted only Rs.1,000/= for transport expense. We are of the opinion that another Rs.1,000/= ought to have been granted by the Tribunal. Even though it was argued that compensation granted under other heads are also inadequate, considering the total amount awarded, no further enhancement is necessary. So, additional amount payable will be Rs.25,100/=. The above amount should be deposited by the third respondent insurance company, over and above the decreed amount by the Tribunal, with 7.5% interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.T.SANKARAN
JUDGE

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